

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CHULA VISTA ELEMENTARY EDUCATION	)	
ASSOCIATION, CTA/NEA,	)	
	)	
Charging Party,	)	Case No. LA-CE-3777
	)	
v.	)	Request for Reconsideration
	)	PERB Decision No. 1232
CHULA VISTA ELEMENTARY SCHOOL	)	
DISTRICT,	)	PERB Decision No. 1232a
	)	
Respondent.	)	February 19, 1998
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Appearances; California Teachers Association by Rosalind D. Wolf, Attorney, for Chula Vista Elementary Education Association, CTA/NEA; Parham & Rajcic by Mark R. Bresee, Attorney, for Chula Vista Elementary School District.

Before Caffrey, Chairman; Dyer and Jackson, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on the Chula Vista Elementary Education Association, CTA/NEA's (Association) request that the Board reconsider its decision in Chula Vista Elementary School District (1997) PERB Decision No. 1232 (Chula Vista). In Chula Vista, the Association alleged that the Chula Vista Elementary School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act)<sup>1</sup>

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<sup>1</sup>**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 provides, in relevant part:

It shall be unlawful for a public school employer to do any of the following:

when it discriminated against four unit members and changed its policy regarding the Association's use of District facsimile machines. After investigation, the Board's Office of the General Counsel dismissed the charge and refused to issue a complaint. The Board adopted that dismissal in Chula Vista.

#### BACKGROUND

The Association's charge in Chula Vista can be broken into two parts. First, the Association contended that the District unlawfully discriminated against four unit employees because those employees participated in activities protected by the Act. Second, the Association contended that the District violated the Act when it changed its policy regarding the Association's use of District facsimile machines.

The Board dismissed the discrimination allegations because the Association had failed to show a sufficient connection between the employees' protected activities and the District's actions. (See Bakersfield City School District (1997) PERB Decision No. 1191 at warning letter, p. 2; Novato Unified School

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(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

District (1982) PERB Decision No. 210 at p. 6.) The Board dismissed the allegations regarding the change in facsimile policy because the collective bargaining agreement (CBA) between the parties contained a grievance and arbitration procedure which covered the alleged conduct and culminated in binding arbitration. (EERA sec. 3541.5(a)<sup>2</sup>; Lake Elsinore School District (1987) PERB Decision No. 646 at pp. 26-27 (Lake Elsinore).)

#### REQUEST FOR RECONSIDERATION

In its request for reconsideration, the Association contends that the Board's decision in Chula Vista contains prejudicial errors of fact because the Board failed to make a "determination" regarding each allegation contained in the charge. (Citing EERA sec. 3541.3(i).)<sup>3</sup> Specifically, the Association notes that the

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<sup>2</sup>Section 3541.5 provides, in relevant part:

[T]he board shall not do either of the following:

(2) Issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

<sup>3</sup>Section 3541.3 provides, in relevant part:

The board shall have all of the following powers and duties:

(i) To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

charge alleged that the District's change in facsimile policy- constituted both an unlawful unilateral change in violation of EERA section 3543.5(c) and unlawful interference with the Association's right of access to unit members in violation of EERA section 3543.5(b). (See EERA sec. 3543.1(b).)<sup>4</sup> The Association contends that the Board dismissed the alleged 3543.5(c) (unilateral change) violation but failed to rule on the alleged 3543.5(b) (interference) violation.

#### DISTRICT'S RESPONSE

The District responds that the Board thoroughly and correctly ruled on each and every allegation contained in the charge when it adopted the Board agent's findings of fact and conclusions of law. The District contends that the Board agent properly deferred both the unilateral change and interference allegations to the CBA's grievance and arbitration machinery.

#### DISCUSSION

PERB Regulation section 32410 provides that a party to a Board decision may request reconsideration on the grounds that the decision contains prejudicial errors of fact, or newly

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<sup>4</sup>Section 3543.1 provides, in relevant part:

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

discovered evidence or law.<sup>5</sup> The Board will not grant a request for reconsideration where the party making the request has failed to establish any ground set forth in PERB Regulation 32410. (See, e.g., California State Employees Association. Local 1000 (Janowicz) (1994) PERB Decision No. 1043a-S at pp. 2-3.)

Likewise, reconsideration is not appropriate where a party merely restates arguments considered and rejected by the Board in its underlying decision. (Id.; Regents of the University of California (1990) PERB Decision No. 829a-H at pp. 2-3.)

In Chula Vista, the Board adopted the Board agent's finding that CBA Article 4 defined the Association's right of access to unit employees. In addition, Article 4.1.8 of the CBA provides:

The Association shall have reasonable  
opportunity to prepare and present a position

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<sup>5</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation section 32410 provides, in relevant part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

in the event of any proposed policy change or new policy.

The Board found that Article 4.1.8 of the CBA arguably prohibited the conduct complained of by the Association: that the District had implemented a new facsimile policy. Since the CBA contains a grievance procedure ending in binding arbitration, the Board dismissed and deferred that portion of the charge to the CBA's grievance and arbitration procedure. (EERA sec. 3541.5(a)(2).)

In its request for reconsideration, the Association contends that the District's allegedly unilateral change in facsimile policy constituted both a violation of EERA section 3543.5(b) and 3543.5(c). The Association claims that, although the Board dismissed the unilateral change allegation, the Board failed to make a "determination" regarding the alleged interference violation. The Association argues that this failure constitutes a ground for reconsideration under PERB Regulation 32410. We disagree.

As the Board agent noted, EERA section 3541.5(a)(2) precludes the Board from issuing a complaint against conduct covered by a negotiated grievance procedure culminating in binding arbitration. (Lake Elsinore at pp. 26-27.) Where such a grievance procedure covers the conduct alleged in the charge, the Board will defer to arbitration every potential violation stemming from that conduct. (State of California (Department of Corrections) (1995) PERB Decision No. 1100-S at p. 14.) Here, the same conduct underlies both the Association's unilateral change allegation and the Association's interference allegation.

Because the CBA's grievance and arbitration procedure covers that conduct, the Board properly dismissed and deferred both charges to that procedure. Accordingly, the Association's assertion that the Board failed to make a determination with regard to the interference allegation is incorrect.

ORDER

The request for reconsideration in Chula Vista Elementary School District (1997) PERB Decision No. 1232 is hereby DENIED.

Chairman Caffrey and Member Jackson joined in this Decision.